

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MARY B. SMITH, )  
Plaintiff )  
 )  
 )  
 )  
vs. ) CIVIL ACTION NO.: 04 CV 10632 MEL  
 )  
DAVID C. NICHOLSON, TRUSTEE )  
OF THE D.J.J. REALTY TRUST, )  
DOMINIC M. SAWICKI, )  
TRUSTEE OF THE DOMINIC M. )  
SAWICKI NOMINEE TRUST, )  
AND CAROL ANN WHITNEY )  
AND GLENN WHITNEY, )  
Defendants )

**DEFENDANTS, DAVID C. NICHOLSON, TRUSTEE OF THE D.J.J. REALTY TRUST,  
DOMINIC M. SAWICKI, TRUSTEE OF THE DOMINIC M. SAWICKI NOMINEE  
TRUST, CAROL ANN WHITNEY AND GLENN WHITNEY'S  
JOINT MOTION FOR SUMMARY JUDGMENT**

**EXHIBIT 2**

COMMONWEALTH OF MASSACHUSETTS  
DISTRICT COURT  
No. 04-CV-10632 MF1

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MARY B. SMITH, )  
Plaintiff, )  
 )  
vs. )  
 )  
DAVID C. NICHOLSON, TRUSTEE, et al, )  
 )  
Defendants. )  
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DEPOSITION OF DEBRA M. SEITH, taken  
in behalf of the defendant Dominic M. Sawicki,  
pursuant to the applicable provisions of the  
Massachusetts Rules of Civil Procedure, before  
David J. Laplante, Registered Professional  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the offices  
of HQ Global Workplace, 945 Concord Street,  
Framingham, Massachusetts, on Friday, October  
14, 2005, commencing at 1:55 p.m.

**LAPLANTE & ASSOCIATES, INC.**  
**(508) 999-7499**

1 into the driveway area, approximately how many  
2 feet separated you and Mrs. Smith or were you  
3 all walking in parallel lines?

4 A. No. They were in front of us. I  
5 would say we were probably at the door and  
6 maybe they were where the window is and a  
7 little bit beyond. They weren't that far  
8 ahead of us.

9 Q. For the sake of our transcription,  
10 and so the reader would know --

11 A. I'm sorry. How many feet is that?

12 Q. Could you give us an estimate?

13 A. How many feet is that? I'd say  
14 between -- I'm letting my husband down right  
15 now. I'd say between 12 and 16 feet. Is that  
16 right?

17 Q. Do you recall having to go back to  
18 the car for anything?

19 A. No.

20 Q. When you started down the course of  
21 the driveway, was the condition of the road  
22 obvious to you?

23 A. Yes.

24 Q. What was the condition of the road?

1           A.    I was glad I wasn't wearing heels  
2    because it was, you know, not -- gosh, it's so  
3    hard to remember. I don't want to mess this  
4    up. It wasn't like a fully paved driveway. I  
5    really can't remember if it was paved at one  
6    time or if it was just a dirt driveway. I  
7    really can't remember. But I remember  
8    thinking, "I'm glad --" I was actually wearing  
9    these shoes probably because I have had these  
10   forever, so I was actually thinking to myself,  
11   "I am glad I'm not wearing heels and I am not  
12   carrying the baby. I don't want to drop these  
13   cookies."

14               I tend to fall, I'm one of those  
15   people.

16           Q.    You're showing us that you were just  
17   wearing rubber-soled shoes?

18           A.    These were them, probably the same  
19   ones or they were the same brand. These are  
20   the ones I wear when I'm pregnant or just had  
21   a child, so.

22           Q.    Did you notice any loose rocks or  
23   gravel in the road or the driveway?

24           A.    I believe like towards the edges

1 there definitely was loose rock or gravel.  
2 And I was watching my step because, it's  
3 mostly because I'm a klutz. It's not because  
4 of anything. You know, you're going down an  
5 incline and I know myself, I watch my step.

6 Q. It was obvious to you when you  
7 started walking down the driveway that these  
8 loose rocks and gravel were there, they  
9 weren't hidden under anything?

10 A. No. It was obvious. I was already  
11 making a mental note not to drop anything.

12 Q. Did you have any -- strike that.

13 Had you met Mrs. Smith prior to  
14 the day of the funeral?

15 A. Yes.

16 Q. When had you met her?

17 A. Well, you probably know the  
18 relationships, my mom's boyfriend or partner,  
19 whatever, for lack of, they've been together  
20 forever now, it's his mom. So I had met her  
21 on various occasions when she would be down  
22 the Cape visiting. Just different, I met her  
23 when her husband passed away, at his funeral.  
24 I saw her just, I don't remember dates or

1 Q. And was there a decline from the  
2 street where you had parked down towards the  
3 Nicholsons' house?

4 A. Yes.

5 Q. Did Mrs. Smith fall on that decline?

6 A. Yes, I think so.

7 Q. Let me show you a picture. Do you  
8 recognize this road?

9 A. Could be their driveway, I don't  
10 know. If you showed me four other ones, I  
11 wouldn't be able to pick which one it was, but  
12 sure, that could be their driveway, if that's  
13 what you're telling me.

14 Q. I'm asking you.

15 A. I don't recognize it, no. But their  
16 driveway looks similar, whatever. It looks  
17 like something I recall.

18 MS. ROUSSOS: Let's have this  
19 marked as Exhibit 2.

20 (Exhibit No. 2, Photocopy of  
21 photograph; so marked.)

22 Q. Just to clarify. I understand that  
23 your testimony is that you didn't recognize it  
24 as the driveway or Olde Lantern Lane. Do you

1 I'm not putting these words into your mouth,  
2 if this happened to be a photograph of the  
3 decline, could you mark where Mrs. Smith fell?

4 A. I can do my best guess because it was  
5 a long time ago. And I would think it would  
6 have been right.

7 Q. I'm going to have you put an X where  
8 you think it was.

9 A. I guess around here, but that's  
10 really a guess.

11 Q. A guess?

12 A. A guess.

13 Q. That's fair enough. That's based on  
14 your recollection that she fell on the right  
15 side of the road as you were descending from  
16 where you parked at the Nicholsons; is that  
17 correct?

18 A. Yes.

19 Q. Could you just sign that for me.

20 A. Sure.

21 Q. When Mrs. Smith fell or immediately  
22 prior to Mrs. Smith falling, did she say  
23 anything or make any comments about the  
24 condition of the road?

1       Lantern Lane as a driveway. Is it fair to say  
2       that you have seen people actually walk down  
3       Olde Lantern Lane before Mrs. Smith fell as  
4       well; correct?

5           A. Just on that day like for the  
6       funeral.

7           Q. So the day of the funeral was the  
8       first time you'd seen anybody walk down Olde  
9       Lantern Lane?

10          A. Most likely. Like I said, I hadn't  
11       been there that often, so when we went there  
12       we drove and we were just going to see the  
13       family who was already in the house.

14          Q. Was there anything, to your  
15       knowledge, that prevented anyone from driving  
16       from Olde Homestead down Olde Lantern Lane to  
17       the Nicholson home that day.

18          A. Nothing would have prevented them,  
19       except if they didn't want to get blocked in.

20          Q. There weren't any signs or barricades  
21       or anything to prevent them from doing so?

22          A. No.

23          Q. I know that you spoke a little bit  
24       about what the weather was like that day, but

1 what were the lighting conditions like on Olde  
2 Lantern Lane when you were walking down to the  
3 home?

4 A. Plenty of sunlight. I don't think we  
5 needed any -- there were not lights on. I  
6 don't think there were any lights there. I'm  
7 not sure. I wouldn't have noticed them unless  
8 they were on and they weren't. We didn't need  
9 them.

10 Q. Was there anything that prevented you  
11 from seeing the surface of Olde Lantern Lane  
12 as you were walking down towards the Nicholson  
13 home?

14 A. No.

15 Q. Now, I think that when you were  
16 describing how Mrs. Smith fell, you said that  
17 her feet went out to the right and her fall  
18 was graceful; is that correct?

19 A. Yes.

20 Q. Did it look like anyone or anything  
21 held her up at all or inhibited her fall in  
22 any way?

23 A. Inhibited her fall?

24 Q. Yes.

1 got there.

2 A. We live on a lake, so there are rocks  
3 and gravel everywhere on lake property. And  
4 this is the Cape, so I assume it's sort of  
5 like that.

6 Q. Just naturally occurring?

7 A. Naturally occurring. Or if there,  
8 like where we live, if they had had a road at  
9 one point, it probably wasn't very good and  
10 they never put a new one in or something like  
11 that, but.

12 Q. Do you know if anyone other than the  
13 friends and family of the Nicholsons ever used  
14 Olde Lantern Lane at any time prior to Mrs.  
15 Smith falling?

16 A. If they used it to walk or drive?

17 Q. Walk or drive?

18 A. I'm sure people used it to drive on,  
19 and most likely to walk because they had dogs.  
20 So they probably went for walks with the dogs  
21 all the time.

22 Q. Have you ever seen anyone other than  
23 friends or family of the Nicholsons walk their  
24 dogs on Olde Lantern Lane?